

Application No. : 10/669,677
Filed : September 23, 2003

REMARKS

Claims 1-13 and 19-25 were pending in the application. By this paper, Applicant has amended Claims 1, 8, 12, 13, 19 and 22-25, canceled Claims 3, 4 and 11 without prejudice, and added new Claim 26. Accordingly, Claims 1, 2, 5-10, 12, 13 and 19-26 are presented for examination herein.

Request for Continued Examination (RCE)

10 Applicant files herewith an RCE for continued prosecution of the present application.

§112 Rejections

Claim 3 – Per paragraph 2 of the Office Action, Claim 3 stands rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. Applicant has herein cancelled Claim 3, thereby rendering the Examiner's rejection moot.

Claim 24 – Per paragraph 4 of the Office Action, Claim 24 stands rejected under 35 U.S.C. 112, second paragraph as the phrase "said moisture" lacks antecedent basis. Applicant has herein amended Claim 24 to delete the word "said". Applicant submits that the Examiner's indefiniteness rejection has been overcome by Applicant's amendment.

§102 Rejections

Claim 1 – Per paragraph 5 of the Office Action, Claim 1 stands rejected as being anticipated under 35 U.S.C. § 102 by Opresco (US Pat. No. 5,462,182, hereinafter "Opresco"). Applicant has herein amended Claim 1 to include limitations relating to: (1) an aperture having a diameter nearly the full diameter of the body; and (2) a ridge formed proximate the cap, the ridge having a diameter larger than an outside diameter of said cap and having a region extending upward beyond a lower edge of the cap when said cap is fully threaded onto the body. Support for Applicant's amendments are replete throughout the specification as filed. Specifically, support for Item (1) above can be found *inter alia* at page 14, lines 13-15 of Applicant's specification as filed; and support for Item (2) can be found *inter alia* at Fig. 3b and its accompanying disclosure.

Application No. : 10/669,677
Filed : September 23, 2003

Applicant submits that Opresco does not teach nor suggest Applicant's Claim 1 invention as amended, and hence cannot as a matter of law be anticipated thereby.

Further, per paragraphs 6, 7 and 8 of the Office Action, Claim 1 stands rejected as being anticipated by Stull (US Pat. No. 4,298, 129, hereinafter "Stull"), Bilani et al (US Pat. No. 6,036,036, hereinafter "Bilani"), and Rumble (US Pat. No. 5,787,574, hereinafter "Rumble") respectively. Applicant submits that none of these references teach nor suggest Applicant's Claim 1 invention as amended herein, and hence the amendments to Claim 1 overcome these Section 102 rejections as well.

Applicant therefore submits that Claim 1 as amended is in condition for allowance.

Claim 8 – Per paragraphs 5, 6, 7 and 8, Claim 8 stands rejected as being anticipated by Opresco, Stull, Bilani and Rumble respectively. Applicant has herein amended Claim 8 to include at least one exclusion ridge formed on said body proximate said first threads, said at least one ridge being adapted to substantially shield a gap created between said cap and said body when said cap is threaded at least partly onto said body. Support for Applicant's amendment is replete throughout the specification; specifically support for the amendment can be found at *inter alia* Fig. 3b and its accompanying disclosure. Applicant submits that the prior art, including the specific references cited by the Examiner as the basis for these rejections, does not in any way teach or suggest such functionality and structure as now present in amended Claim 8, and hence cannot anticipate Claim 8 as a matter of law.

Applicant therefore submits that Claim 8 as amended is in condition for allowance.

Claim 12 – Per paragraphs 5, 6, 7 and 8, Claim 12 stands rejected as being anticipated by Opresco, Stull, Bilani and Rumble, respectively.

Applicant respectfully traverses the Examiner's rejections; specifically, Applicant does not believe that any of the references teach or suggest, *inter alia*, an exclusion ridge as is defined in Applicant's specification. For example, Applicant does not believe that Opresco in any way teaches an exclusion ridge; rather Opresco pointedly *teaches away* from the concept of an exclusion ridge, because each of the embodiments, including those specific figures cited by the

Application No. : 10/669,677
Filed : September 23, 2003

Examiner, readily allow access to the gap thereby not being an “exclusion” at all. Stull, Bilani and Rumble do not teach or suggest such an exclusion ridge either.

However, in the interest of furthering prosecution, Applicant has herein amended Claim 12 to more particularly describe what Applicant regards as his invention. Claim 12 now includes limitations relating to a vertically extending exclusion ridge. Support for Applicant’s amendment can be found, *inter alia*, at Fig. 3b and its accompanying discussion. Applicant believes this amendment now even more clearly distinguishes the invention of Claim 12 as presented herein from the prior art.

Applicant has also amended Claim 12 to add structure with regards to the recited body; specifically, the body is adapted to withstand the application of forces applied by a bear as the body comprises a material of sufficient thickness. Support for Applicant’s amendment is replete throughout the specification as filed. Applicant submits that Claim 12 distinguishes over the prior art, and hence is in condition for allowance.

Claim 13 – Per paragraphs 5, 6, 7 and 8, Claim 13 stands rejected as being anticipated by Opresco, Stull, Bilani and Rumble, respectively. Applicant has herein amended Claim 13 to include, *inter alia*, an exclusion ridge proximate to a gap, the exclusion ridge denying access to the gap by an animal. Support for Applicant’s amendment can be found, *inter alia*, at Fig. 3b and its accompanying discussion.

Applicant submits that the prior art, including the specific references used by the Examiner as the basis of his § 102 rejections, do not teach or remotely suggest any such feature. Opresco does not teach or suggest any sort of exclusion ridge proximate to a gap. Stull teaches that “[t]he diameter of the flange 24 should be the same diameter as the outside diameter of the cap skirt which overlies it.” See Col. 5, lines 24-37 of Stull. Thus, even if Stull did teach an exclusion ridge, which Applicant does not believe Stull does, Stull clearly teaches away from any sort of exclusionary ridge for the gap, since the gap of the Stull invention would be readily accessible by anyone (including an animal) because of the similarity in diameter of the two features proximate the gap.

Application No. : 10/669,677
Filed : September 23, 2003

Further, neither Bilani nor Rumble teach or suggest any sort of exclusion ridge to deny access to the gap. Applicant therefore submits that Claim 13 as amended distinguishes over the prior art, and hence is in condition for allowance.

5 **Claim 19** – Per paragraphs 5, 6, and 7 of the Office Action, Claim 19 stands rejected as being anticipated by OpreSCO, Stull, and Bilani, respectively. Applicant has herein amended Claim 19 to include the step of applying force, using two human hands, to a low profile cap in at least one region to reduce said interference between locking elements. Support for Applicant's amendment can be found, *inter alia*, at Fig. 3 and its accompanying discussion (see, e.g., page 9,
10 which states that “[T]he cap is designed to be very low profile, and virtually eliminate any gap between itself and the body that the animal might exploit.”). The use of a low-profile cap in the invention of Claim 19 is critical as it is this feature, in combination with the other features as claimed, that allows humans to gain access to the interior volume while frustrating animals such as bears.

15 Applicant submits that none of the prior art, including those specific references relied on by the Examiner in the rejection of Claim 19, teach or suggest such functionality as claimed, and hence cannot render Claim 19 as amended anticipated or obvious.

Claim 21 – Per paragraphs 5, 6, 7 and 8 of the Office Action, Claim 21 stands rejected as
20 being anticipated by OpreSCO, Stull, Bilani and Rumble, respectively. Applicant respectfully traverses the Examiner's contention that the aforementioned references teach, *inter alia*, a unitary molded polycarbonate body in conjunction with a nylon cap element. Specifically, none of the references teaches or suggests such a material choice.

 The Examiner submits that nylon and polycarbonate are well known in the art and hence
25 would be an obvious design choice. Applicant does not dispute that these materials are well known; however Applicant submits that there use in combination with other elements in Claim 21 to frustrate the efforts by one or more bears to remove the cap element as disclosed in the claim is clearly novel. **Applicant respectfully requests the Examiner point to a single reference, as required by the anticipation standard, which teaches a polycarbonate body with a nylon cap**

Application No. : 10/669,677
Filed : September 23, 2003

element that cooperate to frustrate subsequent removal of the cap by one or more bears in combination with the other elements present in the claim.

In order for a rejection to be properly made under 35 U.S.C. § 102, each and every element must be explicitly or impliedly taught in the reference. *See MPEP § 706.02*. As Applicant believes that the cited references do not teach each and every reference explicitly or impliedly, Applicant respectfully requests the Examiner withdraw the § 102 rejection for Claim 21.

In addition, the Examiner appears to rely on his assertion that many of the limitations do not have sufficient structure recited to be given patentable weight; however Applicant has disclosed and claimed, *inter alia*, a molded polycarbonate body with a first locking element thereon, a nylon cap element with a second locking element thereon, said first and second locking elements (which of course comprise the aforementioned polycarbonate and nylon respectively) cooperating to frustrate subsequent removal of the cap by one or more bears. Applicant submits that there is more than sufficient structure (i.e., material choice of the locking elements, their location with respect to other recited components, etc.) to give such claim language patentable weight. Hence, Applicant submits that such claim language **must** be considered when analyzing the patentability of the claim.

Claim 22 – Per paragraphs 5, 6, 7 and 8 of the Office Action, Claim 22 stands rejected as being anticipated by Opresco, Stull, Bilani and Rumble, respectively. Applicant respectfully traverses the Examiner’s rejections.

Specifically Applicant does not believe that any of the references teach or suggest, *inter alia*, an exclusion ridge. For example, Applicant does not believe that Opresco teaches an exclusion ridge; rather Opresco *teaches away* from the concept of an exclusion ridge, because each of the embodiments (including those specific figures cited by the Examiner) readily allow access to the gap, thereby not being an “exclusion” feature of any kind. Stull, Bilani and Rumble do not teach or suggest such an exclusion ridge either.

However, in the interest of furthering prosecution, Applicant has herein amended Claim 22 to include limitations relating to an exclusion feature further having a diameter larger than the recited cap. Support for Applicant’s amendment can be found, *inter alia*, at Fig. 3b and its accompanying discussion. Applicant submits that the amendment made herein for purpose of more clearly and particularly describing what Applicant regards as his invention further distinguishes

Application No. : 10/669,677
Filed : September 23, 2003

over the prior art, and hence Applicant respectfully requests that the rejection of Claim 22 be withdrawn.

Claim 23 – Per paragraphs 6 and 8 of the Office Action, Claim 23 stands rejected as being anticipated by Stull and Rumble, respectively. Applicant has herein amended Claim 23 to include limitations relating to a barrier located proximate a gap between the cap and the body, the barrier preventing the intrusion of the gap by an animal. Support for Applicant's amendment can be found, *inter alia*, at page 14, lines 24 – 30 of Applicant's specification as filed. Applicant submits that none of the prior art, including the specific references cited by the Examiner, teaches or suggests a barrier located proximate a gap between the cap and the body which prevents the intrusion of the gap by an animal.

Applicant therefore respectfully submits that Claim 23 as presented herein is in condition for allowance.

Claim 25 – Per paragraph 8 of the Office Action, Claim 25 stands rejected as being anticipated by Rumble. Per this response, Applicant has amended Claim 25 to include a limitation relating to an exclusionary ridge located proximate a gap. The ridge prevents moisture intrusion into the interior volume. Support for Applicant's amendment can be found, *inter alia*, at page 18, lines 17 – 23. Applicant submits that none of the prior art, including those specific references cited by the Examiner, contains such an exclusionary ridge that can prevent moisture intrusion into the interior volume.

Hence, Applicant submits that Claim 25 as amended distinguishes over the prior art, and is in condition for allowance.

§103 Rejections

Claims 13, 21 – Per paragraph 10 of the Office Action, Claims 13 and 21 stands rejected under Section 103 as being unpatentable over the combined teachings of Opresco, Stull, Bilani and Rumble. As argued previously, Applicant does not believe any of these references teach each and every limitation of the inventions as claimed, and hence as a matter of law cannot be rendered obvious by there combined teachings. See e.g. MPEP § 2143.03. Applicant respectfully

Application No. : 10/669,677
Filed : September 23, 2003

requests that the 35 U.S.C. § 103 rejections of these claims be withdrawn in light of Applicant's arguments and amendments presented herein.

New Claims

5 Per this response, Applicant has added new Claim 26. Applicant submits that support for this claim is replete throughout the specification as filed. Specifically, support for new Claim 26 can be found at *inter alia* page 8, line 27 through pages 10, line 13 of Applicant's specification.

Applicant submits that Claim 26 distinguishes over the art of record, and is in condition for allowance.

10 *Declaration Under 37 C.F.R. § 1.132*

Applicant submits herewith a Declaration Under 37 C.F.R. § 1.132 by Jamie Hogan, inventor and owner of the present application, for commercial success of the inventions claimed in Claims 1, 8, 12, 13, 19, 21 – 23, 25 and 26 as presented herein. Applicant believes that each of
15 these claims is now ripe for such 37 C.F.R. § 1.132 declaration of commercial success in order to overcome any potential obviousness type arguments.

Applicant notes that "[e]vidence rising out of the so-called 'secondary considerations' must always when present be considered en route to a determination of obviousness." See MPEP Section 716.01(a). **Hence, Applicant submits that the enclosed Declaration clearly supports
20 Applicant's contention that the inventions of these Claims are non-obvious over the art of record.**

Other Remarks

Applicant hereby specifically reserves its rights of appeal, as well as the right to prosecute
25 claims of different or broader scope in a continuation or divisional application.

Applicant notes that any claim cancellations or additions made herein are made solely for the purposes of more clearly and particularly describing and claiming the invention and responding to the aforementioned restriction election, and not for purposes of overcoming art or for patentability. The Examiner should infer no (i) adoption of a position with respect to
30 patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of

Application No. : 10/669,677
Filed : September 23, 2003

the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on such cancellations or additions.

Furthermore, any remarks made with respect to a given claim or claims are limited solely to such claim or claims.

5 If the Examiner has any questions or comments which may be resolved over the telephone, he is requested to call the undersigned at (858) 675-1670.

Respectfully submitted,

10

GAZDZINSKI & ASSOCIATES

15

Dated: 1/27/06

By: 

20

Robert F. Gazdzinski
Registration No. 39,990
11440 West Bernardo Court, Suite 375
San Diego, CA 92127
Telephone No.: (858) 675-1670
Facsimile No.: (858) 675-1674